

National Environmental Performance Track

Program Guide





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE ADMINISTRATOR

Thank you for your interest in the U.S. Environmental Protection Agency's National Environmental Performance Track.

Performance Track is a voluntary public-private partnership that encourages continuous environmental improvement through the use of environmental management systems, local community involvement, and measurable results. Through Performance Track, EPA recognizes and rewards businesses and public facilities that demonstrate strong environmental performance beyond current requirements. While building a collaborative relationship with EPA, Performance Track participants realize environmental results beyond what could be achieved through regulation and enforcement alone.

Program members demonstrate in their daily business operations that economic prosperity and environmental protection can go hand in hand. Clearly, superior environmental performance is valuable not only to a company's good name and reputation but also to the nation's success in making our air cleaner, our water purer, and our land better protected for future generations.

I invite you to learn more about this innovative partnership program, and I encourage you to consider applying for membership. Thanks to the National Environmental Performance Track Program, hundreds of top-performing facilities around the country are already earning the recognition and rewards they deserve. By joining them, you can too.

A handwritten signature in black ink, reading "Christine Todd Whitman". The signature is stylized and fluid, with a long horizontal line extending from the end.

Christine Todd Whitman

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Introduction

The National Environmental Performance Track (Performance Track) program is designed to recognize and encourage top environmental performers – those who go beyond compliance with regulatory requirements to attain levels of environmental performance and management that benefit people, communities, and the environment.

Our system of environmental protection continues to evolve. There is a growing recognition that government should complement existing programs with new tools and strategies that not only protect people and the environment, but also capture opportunities for reducing costs and spurring technological innovation.

Over the last several years, EPA has joined states, businesses, and community and environmental groups in experimenting with new approaches that achieve high levels of environmental protection with greater efficiency. Performance Track builds upon the lessons EPA has learned from several state leadership programs and from its own efforts, such as the Common Sense Initiative, Project XL, Environmental Leadership Program, and EPA Region I's Star Track program. We learned that innovations in environmental management can be used to create strategic business opportunities and advantages while maximizing the health and productivity of our ecosystems and communities. We learned the importance of keeping innovation programs simple and their transaction costs low. We know that we must focus on performance, not just the means of achieving it, and derive measurable results from our programs.

The Performance Track program is the culmination of these efforts. It recognizes innovation, motivates others to improve, and complements existing regulatory activities. It has been designed so that criteria for participation are proportional to the benefits. It encourages participation by small, medium, and large facilities. It also emphasizes the importance of effective state/EPA partnerships and the need to inform and involve citizens and communities.

Performance Track is designed to recognize facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems. Additionally, facilities are encouraged to achieve more by continuously improving their environmental performance while informing and involving the public.

In developing Performance Track, EPA consulted extensively with stakeholders and state environmental agencies. EPA initially proposed to develop the Performance Track program in its report, *Aiming for Excellence*, which it published in July 1999. In March 2000, EPA released a draft program description and held five public meetings across the country on this proposal. In addition, EPA has consulted closely with state officials, including a national forum to discuss state programs, issues, and participation.

This document describes the criteria a facility will voluntarily meet to qualify for membership in Performance Track and EPA's approach for implementing the program.

Section A.

National Environmental Performance Track Entry Criteria

To qualify for Performance Track, a facility will demonstrate that it:

- Has adopted and implemented an environmental management system (EMS) that includes the elements specified below;
- Is able to demonstrate specific environmental achievements and commit to continued environmental improvement;
- Commits to public outreach and performance reporting; and
- Has a record of sustained compliance with environmental requirements.

1. Environmental Management System (EMS)

A facility will certify that it has an EMS in place.¹ The EMS will include the elements listed below and will have gone through at least one full cycle of implementation (i.e., planning, setting performance objectives, EMS program implementation, performance evaluation, and management review). A facility that has adopted systems based on EMS models with a Plan-Do-Check-Act framework would meet most of these elements.

EPA recognizes that the scope and level of formality of the EMS will vary, depending on the nature, size, and complexity of the facility. EPA's experience with a variety of programs suggests that these EMS elements are within the capability of

small facilities and can be met through a variety of approaches. To help small facilities implement an EMS, EPA will make guidance documents and assistance materials available. A facility will certify that it has implemented an EMS that includes these elements:

Policy

- A written environmental policy, defined by top facility management, that includes commitments to: (1) compliance with both legal requirements and voluntary commitments; (2) pollution prevention (based on a pollution prevention hierarchy where source reduction is the first choice); (3) continuous improvement in environmental performance, including areas not subject to regulations; and (4) sharing information about environmental performance and the operation of the EMS with the community.

Planning

- Identification of significant environmental aspects² and legal requirements, including procedures for integrating anticipated changes to the facility's requirements or commitments in the EMS.
- Measurable objectives and targets to meet policy commitments and legal requirements, to reduce the facility's significant environmental impacts, and to meet the performance commitments made as part of the facility's partici-

¹ For purposes of Performance Track, an EMS represents an organization's systematic efforts to meet its environmental requirements, including maintaining compliance and achieving performance objectives that may be related to unregulated aspects of the organization's activities.

² An "environmental aspect" is defined as an "element of an organization's activities, products, or services that can interact with the environment." Facilities are asked to use their list of significant environmental aspects in selecting performance commitments under this program (see Section A.2).

pation in the program (under Section A.2). In setting objectives and targets, the facility should consider the following criteria: preventing non-compliance, preventing pollution at its source, minimizing cross-media pollutant transfers, and improving environmental performance.

- Active, documented programs to achieve the objectives, targets, and commitments in the EMS, including the means and time-frames for their completion.

Implementation and Operation

- Established roles and responsibilities for meeting objectives and targets of the overall EMS and compliance with legal requirements, including a top management representative with authority and responsibility for the EMS.
- Defined procedures for: (1) achieving and maintaining compliance and meeting performance objectives; (2) communicating relevant information regarding the EMS, including the facility's environmental performance, throughout the organization; (3) providing appropriate incentives for personnel to meet the EMS requirements; and (4) document control, including where documents related to the EMS will be located and who will maintain them.
- General environmental training programs for all employees, and specific training for those whose jobs and responsibilities involve activities directly related to achieving objectives and targets and compliance with legal requirements.
- Documentation of the key EMS elements, including the environmental policy, significant environmental aspects, objectives and targets, a top management representative, compliance audit program, EMS audit program, and overall EMS authority.
- Operation and maintenance programs for equipment and for other operations that are related to legal compliance and other significant environmental aspects.

- An emergency preparedness program.

Checking and Corrective Action

- An active program for assessing performance and preventing and detecting non-conformance with legal and other requirements of the EMS, including an established compliance audit program and an EMS audit program.
- An active program for prompt, corrective action of any non-conformance with legal requirements and other EMS requirements.

Management Review

- Documented management review of performance against the established objectives and targets and the effectiveness of the EMS in meeting policy commitments.
- A facility will retain EMS documentation and provide a summary of its performance, including performance against objectives and targets, and a summary of the results of compliance and EMS audits, in its Annual Performance Report (discussed in Section B.4).

2. Demonstrated Environmental Performance and Commitment to Continued Improvement

A facility will demonstrate specific environmental performance and commit to continued improvements. The framework for reporting on performance is based on the Global Reporting Initiative (GRI), which EPA also has used in Region I's StarTrack program. This framework distinguishes two levels of performance: categories and aspects. A category is a class of environmental impacts (e.g., water discharges). An aspect is an element of an organization's activities, products, or services that can interact with the environment (e.g., discharges of heavy metals). EPA's approach to reporting is consistent not only with the GRI but with generally accepted EMS practice.

The categories and aspects for use in the Performance Track program are listed in the Environmental Performance Table located in the Application Package. Three of the categories in the Table relate to the use of resources. They are energy use, water use, and materials use. Four of the categories relate to the negative effects of activities or processes. These include air emissions, waste generation, water discharges, and accidental releases. The final two categories relate to efforts to preserve or restore resources and to the environmental performance of products. Within each category, EPA has listed one or more environmental aspects that a facility may choose from in reporting on its performance.

EPA will not specify which categories and aspects a facility should select in making its performance commitments. However, the facility's future performance commitments need to be closely tied to the significant environmental aspects and the related objectives and targets as identified in its EMS. In addition, the facility should take the following factors into account in selecting categories and aspects for future performance commitments:

- Local or regional environmental concerns or priorities;
- Cross-media impacts of performance improvements; and
- Progress that can be made through pollution prevention.

Each applicant will demonstrate past performance and commit to and report on future improvements. To demonstrate past performance, a facility is asked to select at least two environmental aspects from any of the categories in the Environmental Performance Table and to describe the improvements in its performance during the preceding two year period. Small facilities have the option of documenting improvement for at least one environmental aspect from any category.³

In making future performance commitments, facilities should select at least four environmental aspects, drawn from two or more categories. Small facilities should select at least two aspects from two or more categories. These commitments should cover the three years that the facility will participate in Performance Track (the standard term for participation). The aspects selected for past and future performance may or may not be the same, depending on the facility's priorities and the status of its performance improvement efforts.

In documenting past performance and committing to continued improvement, a facility will not rely on any actions that represent compliance with existing legal requirements at the federal, state, tribal, or local levels. These improvements will represent actions taken by a facility that go beyond existing legal requirements. A facility will be asked to describe its progress in meeting these commitments in an Annual Performance Report (See Section B.4).

There will be no absolute or relative level of improvement in either past or future performance needed to qualify for the program. EPA is asking each facility to document and commit to a level of performance that is consistent with its own situation, capabilities, and goals. However, each facility is encouraged to commit to significant improvements.

EPA encourages each facility to use the results of its participation in EPA, state, and other partnership programs to document its progress in improving performance. Participation in a partnership program would not on its own qualify a facility, but improvements that occur in the context of such a program would. For example, as a result of participation in EPA's WasteWise, ENERGY STAR®, WAVE (Water Alliances for Voluntary Efficiency), Design for the Environment, or Industry Sector Program, a facility may be able to document past performance and commit to future improvement. EPA's Partnership Programs coordinator will advise facilities on the best ways to link efforts in these programs with participation in Performance Track.

³ EPA recognizes that, depending on the nature and extent of a facility's operations, a small facility may have fewer environmental aspects as well as more limited resources for measuring and committing to specific improvements in performance. For purposes of this program, a facility will be considered to be a "small" facility if the company as a whole is a small business as defined by the Small Business Administration (see FR 30386, Vol. 65, No 94, May 15, 2000) and if the facility itself employs fewer than fifty full-time equivalent employees. A facility will self-certify as to its status as a small business in the application for admission to Performance Track. If a facility is part of a larger company, it is the larger company as a whole that needs to meet the Small Business Administration definition.

3. Public Outreach and Performance Reporting

A facility will demonstrate its commitment to public outreach and report periodically on its performance. There is no standard set of outreach activities, beyond what is required in the Annual Performance Report. Each facility's approach to community reporting beyond this Report will depend on its size, scale of operations, and setting.

EPA expects that applicants will already have established a public outreach program. For example, participants in the Responsible Care program or endorsers of the CERES (Coalition for Environmentally Responsible Economies) principles typically have outreach programs that may include a community advisory panel, newsletters, performance reporting, sponsorship of community activities, and other outreach activities. Many small facilities have adopted lower-cost but effective outreach programs.

In the application, each facility will be asked to describe its activities and plans in three areas: identifying and responding to community concerns; informing community members of important matters that affect them; and reporting on the performance of its EMS and other performance commitments. The facility also will be asked to provide a short list of community/local references who are familiar with the facility and to list any ongoing citizen suits against the facility.

Once a facility is accepted into Performance Track, EPA will list it as a member and make a copy of its application available to the public.

Identifying and Responding to Community Concerns

A facility should be able to demonstrate that it has established mechanisms for identifying and responding to local concerns regarding the environmental effects of its operations. Examples are con-

cerns about emissions, odors, traffic congestion, water discharges, and emergency warnings. At a minimum, a small facility should be able to document that it has designated a point of contact with direct access to facility management and has adopted procedures for responding to questions or concerns of local residents.

Other typical efforts could include a designated community liaison official, periodic public meetings or open houses, and similar mechanisms. The level of public outreach would depend not only on the size of the facility, but also on the degree of community interest and the environmental effects of the facility's operations.

Informing Community Members of Important Matters that Affect Them

Each applicant should describe the mechanisms it uses to inform the community of important issues related to the facility's environmental performance. Many of the mechanisms for identifying and responding to local concerns may meet this objective as well. Open houses, community meetings, web pages, advisory panels, or customer displays could be especially appropriate. Again, these efforts should be appropriate to a facility's size, operations, and setting.

Reporting on the Facility's Performance Commitments

Whatever means a facility employs for community outreach, it should explain specifically how it provides the public with the environmental performance information that it has committed to reporting (described in Section A.2 above). Each facility will provide this information to the local community in its Annual Performance Report.

4. Record of Sustained Compliance with Environmental Requirements

A facility will have a record of compliance with environmental laws and be in compliance with all applicable environmental requirements at the time of application. The facility will maintain its compliance for the duration of its participation in Performance Track.

In evaluating the compliance record of an applicant, EPA, along with its state partners, will consult available databases and enforcement information sources. The scope of this screen and the screening criteria are based on the guidelines presented in the **Agency's Compliance Screening for Partnership Programs Guidance**⁴, with certain design changes appropriate for this program. EPA may later add to, or modify these criteria, as needed.

Participation in Performance Track will not be appropriate if the compliance screen shows any of the following, under federal or state law:

Criminal Activity

- Corporate criminal conviction or plea for environmentally-related violations of criminal laws involving the corporation or a corporate officer within the past 5 years.
- Criminal conviction or plea of employee at the same facility for environmentally-related violations of criminal laws within the past 5 years.
- Ongoing criminal investigation/prosecution of corporation, corporate officer, or employee at the same facility for violations of environmental law.

Civil Activity

- Three or more significant civil violations at the facility in the past 3 years.⁵
- Unresolved, unaddressed Significant Non-compliance (SNC) or Significant Violations

(SV) at the facility.

- Planned but not yet filed judicial or administrative action at the facility.
- Ongoing EPA- or state-initiated litigation at the facility.
- Situation where a facility is not in compliance with the schedule and terms of an order or decree.

In addition, EPA may also consider whether there are significant problems or a pattern of non-compliance in an applicant's overall civil or criminal compliance history.

EPA encourages each facility to assess its own compliance record under these criteria as it makes a decision regarding application to Performance Track.

⁴ This guidance is available at <http://es.epa.gov/oeca/oc/polover.pdf>.

⁵ The term "significant" with respect to violations or non-compliance refers to how the violation is characterized under the applicable media enforcement response policy, available at <http://www.epa.gov/oeca/main/strategy>.

Section B.

Implementation

Copies of the application materials are available either from the Performance Track Web site or from the Performance Track Information Center.⁶ The implementation process is based on the following principles:

- Fair, effective, and timely evaluation of applications;
- Timely response to concerns of participants and community stakeholders;
- Close cooperation among EPA offices and with state and tribal agencies;
- Ongoing evaluation of Performance Track, with the goal of continuous improvement as it matures; and
- Low transaction costs, consistent with achieving the goals of Performance Track.

This section provides an overview of EPA's approach to implementing Performance Track. It covers: (1) the application and notification process; (2) continued compliance; (3) the protocol for site visits; (4) the Annual Performance Report; and (5) removal from the program.

1. Application and Notification Process

A facility formally applies for membership in Performance Track by submitting the application form. EPA uses the information on the form (with the appropriate self-certifications), the results of the compliance screening, and information from consultations with EPA regional offices and state agencies

in evaluating a facility's qualifications. EPA will not routinely conduct site visits as a part of the formal selection process. However, EPA regional offices and state agencies may, on occasion, request a program site visit with an applicant when more information on a facility's qualifications is needed.

EPA will first review the application for completeness and notify the facility when the substantive review has begun. An EPA committee, made up of representatives from headquarters and regional offices, will conduct a substantive review. Through the appropriate regional office, EPA will consult with the state in which the facility is located to help determine the facility's eligibility for Performance Track. As part of this review, EPA will also conduct a compliance screen to evaluate the facility's past performance record.

A facility that is accepted into Performance Track will receive written notification from EPA within 90 days of the end of the application period. EPA will announce that a facility has been accepted through the Performance Track Web site. A facility will be accepted for membership in the program for a period of three years. A facility that is not accepted will receive a brief explanation for EPA's decision.

Once a facility is accepted, it becomes eligible for the incentives offered in the program. The facility will receive a letter that defines the specific incentives available at the time of acceptance and the conditions under which they are granted or may be used (e.g., the conditions for the use of the program logo). EPA will notify members of other incentives as they become available.

⁶ The Web site address is www.epa.gov/performancectrack. Performance Track Information Center can be contacted through email at ptrack@indecon.com or by telephone at 1-888-339-PTRK (7875).

A facility should understand that its membership in Performance Track is discretionary with EPA, that it may not challenge a decision to be rejected or removed from the program, and that the fact of its membership is not relevant to any issue of law or fact in any legal enforcement proceeding for violations of environmental requirements.

Applications for the Performance Track program are currently accepted twice a year, from February 1-April 30 and from August 1- October 31.

2. Continued Compliance

This program recognizes and promotes improved environmental performance, but is built on a foundation of sustained compliance. There are several components of this program that help to assure continued compliance, such as an EMS that meets specified criteria (including compliance with legal requirements), compliance self-audits, and an annual certification that the facility is meeting the program entry criteria and is continuing to maintain compliance. In recognition of these and other program elements, and of good faith participation in this program, facilities will not be subject to greater enforcement scrutiny solely as a result of their membership in Performance Track.

Compliance issues may arise from time to time at a Performance Track facility. In fact, EPA expects that a vigorous performance- and compliance-focused EMS will identify for prompt correction any instances of actual or potential non-compliance. In general, facilities are rewarded for their self-identification, correction, and prompt disclosure of violations through penalty mitigation under EPA's Audit Policy. Performance Track members will likewise be able to avail themselves of this compliance incentive, under the conditions specified in the Policy. In addition, EPA recognizes that violations may be discovered during the course of an on-site Performance Track program visit. EPA similarly will allow the application of the Audit Policy to violations discovered in this manner, provided that the facility could not reasonably be expected to have known about, or identified the violation prior to the on-site visit. Finally, in the unlikely event that a Performance Track facility becomes subject to an enforcement action, EPA will consider, as a discretionary factor in

the assessment of penalties, the facility's good faith participation in the program as an indication of the facility's good faith efforts to comply.

3. Protocol for Site Visits

To evaluate the effectiveness of Performance Track, EPA will conduct program site visits with a limited number of facilities each year. During a program site visit, a facility will make available materials that directly support its participation in Performance Track, including the EMS, progress on performance commitments, and information on community outreach. The protocol for arranging and conducting these site visits is:

- A facility will receive notice in advance of the visit and have an opportunity to schedule the timing with EPA to accommodate facility production schedules and deadlines.
- The scope of the visit will be to assess the facility's implementation of Performance Track, including its EMS, its progress in meeting its performance commitments, and its public outreach efforts.
- The visit may include representatives from EPA headquarters, the EPA regional office, the state environmental agency, and (subject to the approval of the facility) possibly from the local community and other Performance Track facilities.
- The visit will be conducted according to a written protocol that will be made available to the facility well in advance of the visit. EPA expects that the visits would take from a few hours to a full working day, depending on the size and complexity of the facility.
- EPA will visit up to twenty percent of participants in a given year. Facilities may request a program site visit from EPA.

4. Annual Performance Report

Performance Track members must submit an Annual Performance Report to EPA and the public. This report serves to demonstrate participating facilities' progress toward meeting their performance commitments, ensure that the facilities are maintaining their qualifications under the program, and

provide information on the effectiveness of the program. The report format is available on the Performance Track Web site.

The Annual Performance Report includes the following categories of information:

- Summary of the performance of the facility's EMS (based on objectives and targets), including a summary of the EMS and compliance audits performed and any corrective action taken.
- Brief progress report on the facility's performance commitments.
- Summary of the facility's environmental public outreach activities.
- Self-certification that the participant continues to meet the Performance Track criteria.

Annual Performance Reports are due on April 1st in the calendar year following a facility's acceptance into the program, and annually thereafter. Reports to EPA may be submitted electronically, or in hard copy and EPA will post the reports on the Performance Track Web site.

EPA does not prescribe a specific means of transmitting the report to the public. For example, members may choose to post their report on Web sites, disseminate information in newsletters or press releases, hold open houses, organize meetings, or convene community advisory panels.

Each member should maintain on site the supporting documentation used to prepare its Annual Performance Report, and make this documentation available to EPA upon request.

5. Removal from Performance Track

There may be cases when a facility encounters significant performance problems that may warrant its removal from Performance Track. At EPA's discretion, a member may be removed from the program for such reasons as falsifying information in the application or Annual Performance Report, failing to file an Annual Performance Report, misrepresenting environmental performance in advertising or marketing claims, or for compliance problems that would be seen as inconsistent with Performance Track entry criteria.

EPA expects that a participating facility will continue to meet Performance Track criteria, such as maintaining its EMS and conducting appropriate public outreach, while it is in the program. Failure to meet the EMS and public outreach commitments could constitute grounds for removal. EPA also expects that a facility will strive to meet the performance goals stated in its application for the program. However, facilities are encouraged to establish ambitious goals, which they may not always be able to meet. Inability to meet the facility's performance commitments (as discussed under Section A.2) will not, in and of itself, be a cause for removal from the program. However, an inability to make any progress, or a decline in facility performance could result in removal from the program.

Should EPA decide that it may be necessary to remove a facility from Performance Track, EPA will provide the facility with notice of its intention. The facility will be allowed thirty days to respond by taking corrective measures. If corrective measures resolve the issues, EPA will withdraw its notice of intention. A facility may also withdraw from the program at any time by notifying EPA of its intent in writing. Once a facility leaves Performance Track, voluntarily, or at EPA's discretion, it must relinquish the continued use of any and all incentives associated with participation in the program.

Section C.

The State Role and Relationship

The National Environmental Performance Track will rely on EPA's partnership with state environmental agencies (and, where applicable, tribal governments) for its long term success. State agencies run many federally-delegated programs and are responsible for important incentives (e.g., changes in permitting, reporting, and inspection policies). States are likely to have more frequent contact with facilities, making each state's relationship with program participants key to overall success. In addition, many states have programs with similar objectives—such as a commitment to improved environmental performance (beyond what is required by law), EMS use, public involvement, and a strong compliance history. Several state programs start with tiers that may serve as an “on-ramp” to Performance Track.

EPA has consulted extensively with states that sponsor programs similar to Performance Track, and also with states that do not have such a program, but are interested in the concept. In May 2000, EPA brought 20 state officials together in a national forum to discuss program design and implementation. Senior EPA officials have also visited or spoken with commissioners from states that are leading the way in offering recognition and incentives to top performers.

EPA works with state representatives to monitor and improve this program as it is implemented. Based on discussions with state leaders, EPA has developed specific principles to guide this relationship. EPA will:

- Work closely with designated state contacts, and include states in decisions on facilities within their jurisdiction;

- Minimize duplication of state efforts and build on existing state programs to the extent possible;
- Respect state programs with different policy and environmental objectives, and work with states to minimize inconsistencies with national objectives and actions;
- Encourage participation by all the states, tailored to state interests and capabilities; and
- Work jointly with the states to monitor implementation and seek continuous improvement in the program.

All states will be affected in some way by this program. However, the degree of involvement by each state will vary, based on the number of applicants and the level of state interest and resources. EPA assumes, at a minimum, that states will want to be informed of actions relating to facilities under their jurisdiction and to have the opportunity to conduct their own compliance screening. Conducting even minimal screening and providing a central point of contact poses a new workload on state programs.

EPA has been working closely with states that have similar programs, and will continue to work with them to align and integrate national and state programs as much as possible. EPA envisions establishing a form of reciprocity for all equivalent state and national elements. For each element designated as equivalent, qualification at the state level would mean automatic qualification at the national level, and vice versa. EPA welcomes the interest expressed by many states that want to participate actively in the national program. These states can also play a major role in informing participants in existing pro-

grams of the opportunities and eligibility requirements of Performance Track, as well as in evaluating and monitoring the national program over time.

EPA will work closely with states that are establishing new programs, to achieve maximum compatibility between state and national efforts. For example, EPA could facilitate peer exchanges among states, and facilitate contact with Performance Track and program office personnel. EPA will work with these states to develop complementary application procedures.

EPA will invite all states, including those without similar programs, to support the national program as much as they are able. At a minimum, these states will be asked to designate a contact to receive notification of EPA actions.

After consulting with states, EPA will decide which applicants qualify for the national program. As the program matures, EPA will work with the states to determine the most appropriate long term state role in implementing the program.



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